

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

RICHARD MEYER,
Plaintiff,

v.

MARK WAID,
Defendant.

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CASE NO.: 1:18-CV-00800

(Jury Demanded)

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff Richard Meyer files this First Amended Complaint seeking damages from Defendant Mark Waid.

I. THE PARTIES

1. Plaintiff, Richard Meyer, is an individual residing in Williamson County, Texas and is a citizen of Texas.

2. Defendant, Mark Waid, is an individual who has been served and appeared in this cause.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction of these claims and parties pursuant to 28 U.S.C. § 1332, because this is a suit between citizens of different states and the matter in controversy exceeds \$75,000.

4. Venue of this civil action is proper in this Court pursuant to 28 U.S.C. §1391, because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

III. FACTUAL BACKGROUND

A. Meyer's Passion for Superhero Comics

5. Richard Meyer is a lifelong fan of comic books. It started with G.I. Joe in the 1980's. Meyer's father was in the military, and Meyer looked to G.I. Joe as a military hero. Meyer later became intrigued with another Marvel comic, X-Men. Like G.I. Joe, X-Men was about heroes fighting against evil forces, but these heroes were endowed with superpowers due to genetic mutations. Half of the X-Men were women, and Storm, an African-American woman who could control the weather, was one of the X-Men's leaders. Both G.I. Joe and X-Men were racially diverse teams with women in key leadership roles—even back in the 1980s.

6. Meyer continued to read comics, especially Marvel superhero comics, into his adulthood. In his twenties, Meyer followed in his family's military tradition and enlisted in the Marines. During those four years as a Marine, Meyer was deployed to Iraq and attained the rank of sergeant. After his honorable discharge, Meyer went back to college and completed his studies.

7. After college, Meyer joined the military again – this time as an Army sergeant. Meyer served for another four years and during that time was deployed to both Iraq and, later, Afghanistan. Meyer continued to read comic books and graphic novels during his years of service.

B. Creation of the Diversity & Comics YouTube Channel

8. Over the years, Meyer had grown increasingly disappointed with what he perceived as the declining quality of the comic books being published by the two dominant industry publishers, Marvel and DC Comics. That decline was accompanied with decreasing sales of comic books overall. The quality had declined, in Meyer's eyes, due to the publishers' hiring of inexperienced writers and editors who did not have credentials consistent with those

historically recognized within the comics industry. Meyer believed that the stories were poorly written and increasingly uninteresting, and were becoming overtly politicized. Meyer attributed this trend, and the accompanying decrease in sales of comics, due to the publishers' decisions to ignore their fans' preferences for superhero comics and replace those comics with new characters that promoted political ideologies, which Meyer believes dilutes the genre. Moreover, criticism of the industry by comic book fans was met with hostility, derision, name-calling, and profanity, from top-level editors and comic book writers and artists.

9. In April, 2017, Meyer started a YouTube channel called "Diversity & Comics" with the intention of providing comparisons of the superhero comics produced by Marvel and DC Comics in the 1980's and 1990's to the comic books that were being produced today. Meyer's first video reviewed a 1997 Captain America comic book written by Defendant Mark Waid, where Meyer praised the drawing, storytelling, action sequences, and plot development. In fact, Meyer described the book as a classic in the superhero genre.

10. Meyer continued posting videos on Diversity & Comics reviewing older superhero comics as well as current comic books that were being produced. During the following seventeen months, Meyer published and uploaded over 1300 videos, and his YouTube channel amassed over 88,000 followers with over 28 million views. Meyer's criticism of the new, politicized comic books—his videos clearly resonated with industry followers and consumers—was specific and often biting, sarcastic, and hyperbolic (although admittedly at times his attempts at sardonic humor fell flat). Through all of this time, Meyer's aim was to rescue the comic book industry from what he saw as its own self-imposed demise through the over-politicization of stories and dilution of the superhero genre he had grown to love.

11. Although Meyer had many followers, his challenges to the entrenched status quo within the industry also gathered a very vocal group of detractors, including Waid, who had an even larger group of online followers. Waid is a highly influential presence in the comics industry, having spent four decades working in establishment positions with industry leaders Marvel and DC Comics before becoming a freelance speaker and commentator. Waid currently works on multiple comic books published by Marvel. During his long career, Waid has written multiple series that are considered classics in the industry. Waid has thousands of friends following his Facebook posts, and almost 100,000 Twitter followers. Waid and his followers were either part of or supported the comic book industry establishment that Meyer routinely criticized on his channel. Both Waid and his followers were angered by Meyer's critical account of their comics and their use of comics to promote political ideology, resulting in sometimes pointed and public exchanges with Meyer over the validity of his critiques.

12. By contrast, while critical of politicization in comics, Meyer himself is not politically motivated, nor does he hold political views outside of the mainstream—he just believes that political agendas should not be embedded into comic books, and that doing so is a significant factor in the demise of the industry. For example, the number of stores specializing in sales of comic books has dwindled over the past ten years from over 4,300 to about 2,100, and the number of books sold has dropped approximately 50% between 1997 and the present.. Clearly, the product being generated by the industry leaders is not appealing to modern audiences in the same way that Meyer's treasured superheroes of his youth were embraced. This demise has been presided over by the two industry giants, DC and Marvel Comics (who dominate with roughly 90% of market share), while similarly 90% of the distribution of books is controlled by a single entity, Diamond Comic Distributors, Inc. ("Diamond"), which holds an acknowledged monopoly

over direct comic distribution in this country. Independent artists and producers face significant hurdles in getting fresh product to the comic book consuming marketplace—without sponsorship from DC or Marvel and support from Diamond, new voices cannot be heard effectively through traditional channels.

13. Meyer's aggressive criticism led to unfounded claims by establishment supporters like Waid that he held a number of socially extreme views which are flatly untrue. By late 2017, media reports began to emerge characterizing Meyer as a bigot, a racist, and part of a group that promotes white supremacy. At various times, Waid has described Meyer as a serial harasser of women and minorities, and claimed that he promotes hate and intolerance. These statements were intended to discredit Meyer and detract from his vocal calls for fundamental change within the comic book industry.

C. JAWBREAKERS Comic Book and Waid's Interference with Antarctic Press

14. One of the criticisms leveled by Waid and others against Meyer has been that he had only complaints about the emerging low quality product and had no solutions or appreciation for the difficulty of creating quality work. Meyer decided this point had some validity, and that he should channel his vision into creation of what a comic book true to what the tradition should be.

15. On April 9, 2018, Meyer publicly announced that he was publishing his own comic book, JAWBREAKERS—Lost Souls, a story about five ex-superheroes that come out of retirement to protect a giant, mutant ape from being exploited by a warlord. It was a decidedly apolitical, straightforward, multi-superhero comic. It is devoid of any bigoted, nationalist, racist, or gender themes. Meyer had teamed up with top tier artists to illustrate and color the book and was in discussions with a small, independent San Antonio-based, comic book publisher, Antarctic

Press, to publish and distribute the comic book. On the same day, Meyer started a crowd-funding campaign to finance the book. That campaign raised over \$50,000 in the first four days and over \$110,000 by the end of April. Clearly the market was looking forward to a fresh voice, and an alternative to the establishment's status quo.

16. The crowd-funding campaign officially closed on May 9, 2018. By that time, Meyer and Antarctic Press had agreed on the terms for publishing JAWBREAKERS. They agreed that Meyer and his team would produce the book and that Antarctic Press would publish and distribute it. Meyer and Antarctic Press agreed that after paying all costs of production they would split the profits from sales 50/50. In addition, Antarctic Press agreed conceptually to publish future comic books written by Meyer, including IRON SIGHTS and later JAWBREAKER editions.

17. That same day, rumors and leaked chat transcripts suggested that certain retailers aligned with Waid and his followers had agreed not to carry Meyer's book and to boycott Antarctic Press because of the misinformation being spread about Meyer and his views.. Initially, Antarctic Press was not flustered. Instead, Antarctic Press responded, "That just shows me we're doing the right thing standing with you." Later that evening, Antarctic Press publicly announced on its Twitter page, "It's official! We're publishing JAWBREAKERS in September!"

18. Less than 36 hours later, Waid tweeted to his followers that he was going to contact Antarctic Press to interfere with its impending publication of Meyer's book, saying:

I have a call in to Antarctic Press. Until I hear back, I'm (hesitantly) willing to give them the benefit of the doubt that they don't really understand who or what they're getting into business with, which – though it would seem a stretch – is a possibility. If I do hear back, I'll report in.

On information and belief, this triggered an onslaught by Waid's followers against Antarctic Press, with calls and threats to Antarctic Press and its owners' other unaffiliated businesses.

19. Later that day, Waid spoke by telephone with one of the owners of Antarctic Press, and convinced him that Antarctic Press should repudiate its contract with Meyer. Frightened for its very survival by Waid's threats, and primarily because of his unwelcome interference, Antarctic Press caved to Waid's pressure, and issued the following statement:

After careful consideration, it is the decision of Antarctic Press to not release the comic series Jawbreakers.

Antarctic Press is a staunch believer in Creator's Rights and giving creators a chance to showcase their creation and allowing that creation to be judged on its merits.

Many forces, many of them should be viewed with great trepidation about our society acts, have led us to this decision. We do not take this decision lightly as we do believe that there should be separation between "ART" and the "ARTIST" and that separation has been blurred in our decision.

Almost immediately following Antarctic Press's announcement, perhaps having been warned that his interference was actionable, Waid deactivated all of his theretofore quite active social network accounts without explanation.

20. Following Antarctic Press's experience, no other publishers would consider publishing Meyer's comic book. Meyer's only option was to self-publish by creating his own independent publishing company, which he did. At significant expense, and after significant delay in publication of JAWBREAKERS, Meyer is now performing all of the tasks that Antarctic Press would have performed in the absence of Waid's interference with Meyer's contract. Instead of pursuing other potential business interests, including writing additional comic books, Meyer is responsible for overseeing the printing of JAWBREAKERS and arranging to ship copies ordered online through Meyer's crowd-funding campaign.

21. Meyer's loss of access to independent publishers due to Waid's interference is not limited to increased production costs. As a result of Waid's actions, Meyer has been effectively

blackballed by the comic book industry. No publishers, independent or otherwise, are currently willing to consider working with Meyer on JAWBREAKERS or future projects. Meyer could not even find a U.S.-based artist for his next book, and has resorted to contracting with one he located from the Philippines. Access to conventions and convention panels is also linked to being published by one of the dominant or independent publishers. The lack of access to those markets has further damaged Meyer and is a direct result of Waid's interference with Meyer's contract with Antarctic Press and false statements.

D. Mark Waid's Continued Defamation of Richard Meyer

22. In the meantime, Waid has described the events of May 11 in interviews and on comic convention panels. Without limitation, Waid participated in a question-and-answer session with a panel of comic book creators in Houston, Texas. There, Waid was asked about Meyer and AP. Waid spoke for approximately five minutes recounting his version of the events leading to AP's decision to drop JAWBREAKERS. After confirming that he was talking about Meyer and his artist collaborator, Waid made the following statements:

Uh these guys created the, you know, they did their comic, great, awesome. . . . there was, there was a bunch of stores that decided they weren't going to carry the comic, so these guys made a list of those stores . . . and their phone numbers and the names, first and last of all their employees." . . . And with the idea that, 'oh no, don't call them and harass them, we're not telling you to do that at all!' But here's their phone numbers and their first and last names of all their employees. Well, c'mon."¹

. . .

So, there was a publisher here in Texas, who was going to publish their comic, for, after it had been kickstarted they were gonna, like publish it for comic stores.

. . .

¹ When asked if Waid intended that comment to suggest that Meyer was directing his followers to harass the stores and their employees, Waid responded, "Absolutely." .

These guys are, these are indefensible human beings... they harass women, they harass minorities, they harass LGBTQ people, um, they're full of hate. What are you doing?

By making such statements in Houston, Texas and elsewhere, Waid defamed Meyer and caused him damages.

IV. CAUSES OF ACTION

A. Tortious Interference with Contract

23. Meyer had a contract with Antarctic Press for the publication of his JAWBREAKERS and other comic books. Waid either had knowledge of the contract or had knowledge of facts and circumstances that would lead a reasonable person to believe there was a contract in which Meyer had an interest. Through the actions described above, Waid intentionally induced Antarctic Press to breach its agreement with Meyer. Waid's interference proximately caused injury to Meyer for which he seeks damages in excess of \$75,000.

B. Defamation

24. Including his statements described above in Houston, Texas, Waid has intentionally published statements of fact to his followers and the general public regarding Meyer, including falsely stating that Meyer published the first and last names of comic book store employees to encourage his followers to harass and threaten them, as well as characterizing Meyer as a racist, serial harasser of minorities, and as affiliated with white supremacists. Those statements were false and were published with actual knowledge of, or reckless disregard for the statements' falsity.

B. Exemplary Damages

25. Moreover, Meyer's injuries were the result of Waid's malicious acts. Waid acted with the specific intent to cause substantial injury or harm to Meyer when he interfered with

Meyer's contractual relations and defamed Meyer. Because Waid acted with malice, Meyer is entitled to exemplary damages under TEX. CIV. PRAC. & REM. CODE § 41.003(a)(2).

26. Alternatively, Waid had actual, subjective awareness of the risk of harm to Meyer but proceeded nonetheless to defame Meyer and to interfere with Meyer's contractual relations with conscious indifference to Meyer's rights, safety, or welfare. Likewise, when viewed objectively from Waid's perspective, Waid's actions involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Meyer. As a result, Meyer is entitled to an award of exemplary damages as a result of Waid's grossly negligent conduct pursuant to TEX. CIV. PRAC. & REM. CODE § 41.003(a)(3).

V. JURY DEMAND

27. Pursuant to FED. R. CIV. P. 38, Meyer demands a jury trial on all issues that may be tried to a jury.

VI. RELIEF REQUESTED AND PRAYER

28. Based on the foregoing, Meyer requests the following relief:

- a. actual damages of over \$75,000;
- b. special damages in the form of lost profits proximately caused by Waid's interference with Meyer's contractual relations;
- c. exemplary damages;
- d. costs of court; and
- e. all other relief to which Plaintiff Richard Meyer shows himself to be justly entitled.

WHEREFORE, Plaintiff Richard Meyer respectfully requests that the Court enter judgment awarding the relief requested above against Defendant Mark Waid.

Respectfully submitted,

FRITZ, BYRNE, HEAD & GILSTRAP, PLLC
221 West Sixth Street, Suite 960
Austin, Texas 78701
Telephone: (512) 476-2020
Telecopy: (512) 477-5267

BY: /s/ Daniel H. Byrne
Daniel H. Byrne
State Bar No. 03565600
Email: dbyrne@fbhg.law
Dale L. Roberts
State Bar No. 24001123
Email: droberts@fbhg.law

ATTORNEYS FOR PLAINTIFF RICHARD MEYER

CERTIFICATE OF SERVICE

I certify that this document was served on the counsel of record listed below using the Court's ECF system on June 24, 2019:

Beverly Reeves
breeves@reevesbrightwell.com
Ryan Pierce
rpierce@reevesbrightwell.com
Reeves & Brightwell, LLP
221 West Sixth Street, Suite 1000
Austin, Texas

Mark S. Zaid
mark@markzaid.com
Mark S. Zaid, P.C.
1250 Connecticut Avenue, Northwest, Suite 700
Washington, D.C. 20036

/s/ Daniel H. Byrne
Daniel H. Byrne